

APPEAL NO. 040665
FILED APRIL 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 12, 2003. The hearing officer determined that the respondent/cross-appellant's (claimant) _____, compensable injury includes the lumbar spine and a left knee meniscus tear, and that the claimant had disability beginning February 11, 2003, and continuing through October 21, 2003. The appellant/cross-respondent (carrier) appealed both the extent-of-injury and disability determinations as being unsupported by the evidence. The claimant responded, urging that the determinations as to the lumbar spine and left knee meniscus tear, and that the claimant had disability, should be affirmed, as supported by the evidence. The claimant cross-appealed the hearing officer's apparent limitation of the lumbar spine injury to a lumbar strain, when there was no extent of the lumbar spine injury before him, and took issue with the hearing officer's ending date of disability. The carrier did not respond to the claimant's cross-appeal.

By our decision in Texas Workers' Compensation Commission Appeal No. 033202, decided February 10, 2004, we affirmed the extent-of-injury determination, but dismissed "that portion of Finding of Fact No. 4 that purports to limit the lumbar spine injury to a strain as being beyond the scope of the issue before the hearing officer and not necessary to his determination of the issues." In addition, we remanded the case to the hearing officer to consider the ending date of disability. The hearing officer determined that no further hearing was necessary and issued a new decision and order which added the words "at least" to Finding of Fact No. 4, so that it now reads: "Claimant's fall on _____ at least caused a lumbar strain and meniscus tear of the left knee." The hearing officer also determined that the claimant had disability beginning February 11, 2003, and continuing through November 12, 2003. The carrier again appeals the extent-of-injury and disability determinations, submitting the identical appeal that was submitted earlier. The claimant responded, urging affirmance. The claimant again cross-appeals, requesting review of the finding that the lumbar injury is a lumbar strain, apparently overlooking our previous disposition of that concern, and the hearing officer's subsequent change to that finding. The claimant is not aggrieved and we decline to address his cross-appeal further.

DECISION

Affirmed.

EXTENT OF INJURY

We previously affirmed the hearing officer's extent-of-injury determination and adopt the essence of our decision of this issue as set forth in Appeal No. 033202, *supra*.

DISABILITY

Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.- Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). There is sufficient evidence to support the hearing officer's determination of disability and the period thereof. As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge